

Low-Effect Habitat Conservation Plan

for the

Issuance of an Incidental Take Permit Under Section 10(a)(1)(B)

of the Endangered Species Act

for the

Federally Endangered

San Diego Fairy Shrimp (*Branchinecta sandiegonensis*)

for the

Main 16, LP. Ramona Project

in San Diego County, California

February 2015

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EXECUTIVE SUMMARY

This Low-Effect Habitat Conservation Plan (HCP) has been prepared to support an application for an incidental take permit from the U. S. Fish and Wildlife Service (Service) pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 et seq.) to incidentally take the federally listed endangered San Diego fairy shrimp (*Branchinecta sandiegonensis*). The proposed Main 16, LP. Ramona Project (herein referred to as “Project”) would include the construction and operation of a commercial development on an approximately 2.5-acre property that is currently vacant in the community of Ramona, an area of unincorporated San Diego County, California. Field surveys show that the Project site supports San Diego fairy shrimp (Black 2011, 2006, and 2004). No other federally listed threatened or endangered species occurs on the Project site; however, the site is located within designated critical habitat for the San Diego fairy shrimp.

The proposed Project would consist of a commercial development at the northwestern corner of State Route 67 (SR 67; also referred to as Main Street) and 16th Street in the community of Ramona (Assessor’s Parcel Number [APN] 281-171-04). The Project would include grading of the entire site. The Project would therefore permanently remove 0.01 acre of on-site basins that support San Diego fairy shrimp.

Main 16, LP (herein referred to as “Applicant”) proposes to mitigate impacts to the San Diego fairy shrimp through the purchase of 2 vernal pool/basin with fairy shrimp conservation credits (i.e., 0.2 acre of vernal pool basin and 1.8 acres of associated watershed) at the Ramona Grasslands Conservation Bank (RGCB). The RGCB was established through a Conservation Banking Enabling Instrument (CBEI), signed by the Service and the bank sponsor. The CBEI provides assurances that the RGCB will be protected, managed, and monitored for the long-term conservation benefit of the San Diego fairy shrimp that are present at the bank. The Applicant will be entitled to rely on these management and monitoring assurances. The Applicant has provided proof of purchase of the 2 vernal pool/basin with fairy shrimp conservation credits from RGCB to the Carlsbad Fish and Wildlife Office (CFWO). The Applicant requests a permit for a 5-year duration commencing on the date of permit approval.

This HCP has been prepared in consultation with the Service to fulfill the requirements of a Section 10(a)(1)(B) permit application for the proposed Project.

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1.0 INTRODUCTION

1.1 PURPOSE AND NEED

This Low-Effect Habitat Conservation Plan (HCP) has been prepared to support an application for an incidental take permit from the U.S. Fish and Wildlife Service (Service) pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 et seq.) to incidentally take the federally listed endangered San Diego fairy shrimp (*Branchinecta sandiegonensis*). The proposed Main 16, LP. Ramona Project (herein referred to as “Project”) would include the construction and operation of a commercial development on an approximately 2.5-acre property that is currently vacant in the community of Ramona within an unincorporated portion of San Diego County, California. Field surveys show that the Project site supports San Diego fairy shrimp (Black 2011, 2006, and 2004) within 0.01 acre of ponded basins. The proposed Project would permanently remove all of the basins that support San Diego fairy shrimp from the Project site.

Main 16, LP (herein referred to as “Applicant”) is seeking a permit for incidental take of the San Diego fairy shrimp in the course of otherwise lawful activities associated with construction of the Project. Such authorization is necessary because activities associated with the construction of the Project are anticipated to result in incidental take through removal of San Diego fairy shrimp and its habitat.

1.2 REGULATORY REQUIREMENTS

1.2.1 Federal Endangered Species Act

The Act provides for the protection and conservation of fish, wildlife, and plants that have been federally listed as threatened or endangered. Activities otherwise prohibited by Section 9 of the Act and subject to the civil and criminal enforcement provisions of Section 11 of the Act may be authorized for Federal entities, pursuant to the requirements of Section 7 of the Act and for other persons pursuant to Section 10 of the Act.

Section 10(a)(2)(A) of the Act states that no permit may be issued by the Secretary of the Interior (Secretary) authorizing any taking referred to in Section 10(a)(1)(B) unless the applicant submits to the Secretary an HCP that specifies:

1. The impact which will likely result from such taking;
2. What steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps;
3. What alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and
4. Such other measures that the Secretary may require as being necessary or appropriate for purposes of the plan.

This HCP has been prepared in consultation with the Service to fulfill the requirements of Section 10(a)(2)(A) of the Act as part of an application for a Section 10(a)(1)(B) incidental take permit being sought for the proposed Project.

The Applicant is proposing this plan be evaluated as a “low-effect” HCP. A low-effect HCP involves “(1) minor or negligible effects on federally listed, proposed, or candidate species and their habitats covered under the HCP; and (2) minor or negligible effects on other environmental values or resources” (Service and National Oceanic and Atmospheric Administration [NOAA] 1996). In addition, “‘low-effect’ incidental take permits are those permits that, despite their authorization of some small level of incidental take, individually and cumulatively have a minor or negligible effect on species covered in the HCP” (Service and NOAA 1996).

1.2.2 National Environmental Policy Act

The National Environmental Policy Act (NEPA) requires Federal agencies to analyze the environmental effects of their actions (in this instance, the issuance of an incidental take permit) and include public participation in the planning and implementation of their actions. The NEPA-compliance process helps Federal agencies make informed decisions with respect to the environmental consequences of their actions and ensures that measures to protect, restore, and enhance the environment are included, as necessary, as a component of their actions.

Compliance with NEPA is obtained through one of three methods: (1) preparation of an Environmental Impact Statement (generally used for high-effect HCPs); (2) preparation of an Environmental Assessment (generally used for moderate-effect HCPs); or (3) a categorical exclusion (allowed for low-effect HCPs). Low-effect HCPs are categorically excluded under NEPA, as defined by the U.S. Department of Interior Manuals 516 DM 2, Appendices 1 and 2, and 516 DM 6, Appendix 1.

1.3 PERMIT APPLICANT/HOLDER

As previously stated, Main 16, LP is the Applicant for the Section 10(a)(1)(B) permit. If a permit is issued by the Service, Main 16, LP will be the permit holder of the incidental take permit.

1.4 PERMIT DURATION

The proposed duration of the Section 10(a)(1)(B) permit for this Project is 5 years from the date of issuance by the Service. The permit duration will allow the Applicant to (1) prepare final planning and design of the Project; and (2) complete construction of the proposed commercial development at the Project site. The permit would allow direct or indirect incidental take of the San Diego fairy shrimp within the geographic boundaries identified in the HCP by the permit holder during activities covered by the permit over a 5-year period.

1.5 PERMIT BOUNDARY

The geographic area covered by this HCP consists of the 2.5-acre Project site located at the northwestern corner of State Route 67 (SR 67; also referred to as Main Street) and 16th Street in the community of Ramona, an area of unincorporated San Diego County, California (Assessor's Parcel Number [APN] 281-171-04), where the proposed commercial center would be constructed (Figures 1, 2, 3, and 4). The Project site is within the defined service area of the Ramona Grassland Conservation Bank (RGCB), also located in the community of Ramona, where credits have been purchased to mitigate for Project impacts (Figures 1 and 2).

1.6 SPECIES TO BE COVERED BY THE PERMIT

Incidental take coverage is requested for the following species:

Species	Federal Status
San Diego fairy shrimp (<i>Branchinecta sandiegonensis</i>)	Endangered

2.0 PROJECT DESCRIPTION/ACTIVITIES COVERED BY PERMIT

The Project would consist of an approximately 2.5-acre commercial development at the Project site. Project activities would include grading of the entire 2.5-acre Project site and constructing commercial buildings and an associated parking lot. Covered Activities for the Project would include all construction activities related to site preparation (grading and/or compaction), facilities construction, and site finish (landscaping).

The proposed Project would permanently remove all San Diego fairy shrimp and its habitat from the Project site. To mitigate impacts to the San Diego fairy shrimp and its habitat (on-site ponded basins), the Applicant has purchased 2 vernal pool/basin with fairy shrimp conservation credits at the RGCB, where the San Diego fairy shrimp and its habitat (i.e., vernal pool basins and associated watersheds) are preserved, monitored, and managed in perpetuity.

3.0 ENVIRONMENTAL SETTING/BIOLOGICAL RESOURCES

3.1 EXISTING ENVIRONMENTAL SETTING OF PROJECT SITE

3.1.1 Site Location

The approximately 2.5-acre Project site (APN 281-171-04) is located along SR 67 between Ramona Street and 16th Street (Figure 2). The Project site is located in the Santa Maria Section of Township 13 South, Range 1 East on the U.S. Geological Survey (USGS) 7.5-minute San Pasqual quadrangle map (Figure 3).

3.1.2 Land Use

The Project site is currently undeveloped and vacant (Figure 4). A sewer and power line easement occurs along the outside of the western Project site boundary. The SR 67 corridor in the vicinity of the Project site is mostly built out with commercial centers, although the

properties on either side of the Project site (to the west and east) are currently vacant. Properties to the north and south of the Project site are developed with residences (both single- and multi-family) and commercial use (shopping center with a supermarket), respectively.

3.1.3 Topography and Soils

The elevation of the Project site is approximately 1,400 feet above mean sea level, and the Project site is relatively level. Based on available mapping, the Project site is underlain with an igneous, granitic formation (Hernandez et al. 2007). Three soil types are present on the Project site, including Placentia sandy loam (2 to 9 percent slopes), Fallbrook sandy loam (5 to 9 percent slopes, eroded), and Bonsall sandy loam (2 to 9 percent slopes; Bowman 1973).

3.2 COVERED SPECIES

3.2.1 San Diego Fairy Shrimp and its Critical Habitat

3.2.1.1 Status and Distribution

The San Diego fairy shrimp was federally listed as endangered on February 3, 1997 (62 FR 4925). The *Recovery Plan for Vernal Pools of Southern California* (“vernal pool recovery plan”), which includes San Diego fairy shrimp, was published in September 1998 (Service 1998).

Critical habitat for the San Diego fairy shrimp was designated on October 23, 2000 (65 FR 63438). Critical habitat was remanded but not vacated by the Central District Court of California on June 12, 2002. Critical habitat was re-proposed on April 22, 2003 (68 FR 19887). Revised critical habitat for the San Diego fairy shrimp was designated on December 12, 2007 (72 FR 70648), and encompassed about 3,082 acres of land in 5 units (with 29 subunits) in San Diego and Orange counties. On September 20, 2010, the District Court of the District of Columbia vacated 151 acres of designated critical habitat as mandated by the U.S. Court of Appeals for the District of Columbia Circuit on September 14, 2011, and its underlying Opinion and Judgment dated July 22, 2011 (*Otay Mesa Property L.P. et al. v. U.S. Department of the Interior, et al.*, 1:08-CY-00383), leaving 2,931 acres in designated critical habitat.

The Service completed a 5-Year Review of San Diego fairy shrimp in September 2008 (5-Year Review; Service 2008) and published a notice announcing the completion of the review in the *Federal Register* on March 25, 2009 (74 FR 12878). The 5-Year Review recommended no change in the status of the San Diego fairy shrimp. The 5-Year Review estimated that approximately 137 complexes (series of vernal pool groups that are hydrologically connected with similar species compositions) are occupied by San Diego fairy shrimp throughout the species range from southern Orange County to northern Baja California, Mexico (Service 2008).

The status of the San Diego fairy shrimp is described in detail in the 5-Year Review for this species. Additional information for this species can be found in the vernal pool recovery plan (Service 1998). Please refer to these documents for detailed information on the San Diego fairy shrimp's listing status, life history requirements of this species, threats to the species, and conservation needs of the species.

3.2.1.2 Life History

The San Diego fairy shrimp hatches from encysts embryos, often referred to as eggs or cysts. Hatching and maturity occurs within 1 to 2 weeks of rainfall events with best hatching under cool to moderate temperatures in the winter and early spring months (Hathaway and Simovich 1996). Upon fertilization by males, new cysts are produced from females that are either dropped to the bottom of the pool or remain attached to the female when she dies and sinks. Cysts can remain in the soil for several years and not all cysts will hatch when hydrated, a survival mechanism of the species if the adults fail to reproduce (Ripley et al. 2004).

3.2.1.3 Occurrences on the Project Site

Three vegetation communities/habitats occur within the Project site, including non-native grassland, disturbed habitat, and eucalyptus woodland (HELIX Environmental Planning, Inc. 2013; Figure 5). It should be noted that no vernal pools were observed on the Project site; however, the Project site contains 0.01 acre of ponded basin¹ occupied by San Diego fairy shrimp (comprised of Basins 1 through 4 on Figure 5). In addition, the entire Project site is located within designated critical habitat for the San Diego fairy shrimp (Figure 6).

Surveys for San Diego fairy shrimp were conducted at the Project site. San Diego fairy shrimp cysts were observed during the 2004 and 2006 dry season surveys in 3 on-site ponded basins (Basins 2, 3, and 4) and hatched fairy shrimp were observed during the 2010-2011 wet season surveys in Basins 1 and 2 (Figure 5). Basin 1 in the northwestern corner of the Project site is adjacent to several basins located within an off-site sewer and power line easement. During maximum ponding as occurred in 2011, the off-site basins and Basin 1 can form into 1 basin with only a small portion of this larger basin occurring on the Project site. When drying, the larger basin separates into 4 small basins, 1 of which occurs on the Project site (i.e., Basin 1). Figure 5 depicts Basin 1 when there is maximum ponding. During a dryer year (2006), Basin 1 remains distinct from the off-site basins.

The Project site is highly disturbed due to its adjacency to SR 67 and human disturbances on the site. It is likely that the continued moderate disturbance along the sewer and power line easement and, to a lesser extent, along the northern boundary of the Project site helps maintain the rut topography and disturbed areas that make them suitable for continued fairy shrimp habitat (Black 2011).

¹ Ponded basins are generally unvegetated, whereas vernal pools typically are vegetated with vernal pool species during the wet season. Because of the disturbed nature of the Project site, it is unclear if the ponded basins are remnants of historic vernal pools and/or were formed as a result of human activity (i.e., tire ruts).

4.0 POTENTIAL BIOLOGICAL IMPACTS/TAKE ASSESSMENT

The proposed Project would result in permanent, direct impacts to 0.01 acre of ponded basin occupied by San Diego fairy shrimp and 2.5 acres of designated critical habitat as a result of grading the entire Project site. Such impacts to San Diego fairy shrimp individuals and critical habitat would be categorized as a loss of limited extent of degraded basin area and that, in the absence of the Project, it is expected that the basins would continue to degrade over time by ongoing human disturbances. As noted above, Basin 1 in the northwestern corner of the Project site (Figure 5) can form into a larger basin with several offsite basins during maximum ponding events but is distinct as drying occurs. In dryer years, Basin 1 remains separate from the offsite basins. While there may be some minimal impact to a small portion of watershed for the 3 small off-site basins, these basins are anticipated to continue to pond in both wetter, as well as dryer, rainfall years. Therefore, off-site impacts to San Diego fairy shrimp are not expected to occur.

This HCP includes measures to mitigate the impacts to San Diego fairy shrimp and its designated critical habitat through the purchase of 2 vernal pool/basin with fairy shrimp conservation credits within the 210-acre RGCB. With implementation of this HCP, impacts to San Diego fairy shrimp and designated critical habitat would be mitigated to the maximum extent practicable.

5.0 CONSERVATION STRATEGY

This HCP's overall conservation strategy for the San Diego fairy shrimp is to allow impacts to 0.01 acre of degraded ponded basin with low long-term conservation value at the Project site in exchange for the purchase of 2 vernal pool/basin with fairy shrimp conservation credits within the RGCB, where the preservation and long-term management and monitoring of vernal pools would provide higher long-term conservation value for the San Diego fairy shrimp.

5.1 BIOLOGICAL GOAL

The long-term goal of this HCP is to preserve, manage, and monitor San Diego fairy shrimp habitat greater in area and superior in ecological function to that presently on the Project site and to improve the potential for sustaining this habitat on the RGCB in perpetuity. The Project site is largely surrounded by existing development and has very little long-term conservation value. In contrast, the 210-acre RGCB functions as part of the larger 3,800-acre Ramona Grasslands Preserve that provides contiguous grassland and vernal pool habitats which are managed specifically for plant and animal species dependent upon these habitat types. The RGCB includes a Long-Term Management Plan (LTMP) that has specific management requirements for vernal pools and the San Diego fairy shrimp and an adaptive management component.

5.2 CONSERVATION MEASURES

5.2.1 Actions to Avoid and Minimize Impacts

To ensure that no take occurs beyond the limits of the approved Project, the following measures shall be implemented by the Applicant:

1. Grading limits will be delineated with construction fencing and silt fencing to insure that impact limits do not extend beyond the allowed limits of development.
2. A biologist will monitor grading of the site daily (or as determined necessary by the monitoring biologist) and provide a letter summarizing compliance with the construction limits of the proposed Project to the Service within 1 month of completion of Project grading.
3. The Project construction contractor will conduct grading outside the rainy season (October 1 through March 31). If grading is to be done after October 1 and ponding of the basins has not occurred, the Applicant shall submit a proposed grading strategy for review and approval by the Service that will insure that indirect impacts are avoided to the existing basins located immediately adjacent to the Project site. No grading shall occur during this timeframe without written concurrence from the Service.
4. Avoidance of long-term indirect impacts to fairy shrimp-occupied basins immediately adjacent to the site would be achieved by ensuring that flows from the Project site are directed away from basins immediately off site to the west and have been adequately cleaned through the use of Best Management Practices (BMPs) during construction and throughout the life of the Project. These BMPs include treating all flows on site through the use of a retention/infiltration basin prior to outletting into the storm drain system.

The Applicant shall be responsible for successful implementation of all the measures described above.

5.2.2 Actions to Mitigate Impacts

To mitigate the impacts to 0.01 acre of ponded basin occupied by the San Diego fairy shrimp as a result of Project construction, the Applicant will purchase 2 vernal pool/basin with fairy shrimp conservation credits (i.e., 0.2 acre of vernal pool basin and 1.8 acres of associated watershed) from within the RGCB. The approximately 210-acre RGCB is approximately 3 miles west of the Project site (Figure 2). The RGCB provides for the long-term conservation of vernal pool/basin areas, including watersheds, that support San Diego fairy shrimp. In addition, portions of the RGCB are located within designated critical habitat for the San Diego fairy shrimp (Figure 6).

The RGCB was established through a Conservation Banking Enabling Instrument (CBEI), signed by the Service and the bank sponsor. The CBEI provides assurances that the RGCB will be protected, managed, and monitored for the long-term conservation benefit of the San Diego fairy shrimp that are present at the bank. The Applicant will be entitled to rely on these

management and monitoring assurances. Upon purchase of 2 vernal pool/basin with fairy shrimp conservation credits from the RGCB, the Applicant shall have no further management and monitoring responsibilities for the off-site mitigation component.

6.0 PLAN IMPLEMENTATION

6.1 COMPLIANCE MONITORING AND REPORTING

The Applicant will institute a monitoring and reporting program to ensure that this HCP is being properly implemented. As part of that program, the Applicant will provide the Service, on an annual basis, an HCP Compliance Report describing the activities that have occurred pursuant to the take authorizations and an assessment of the status of this HCP until the project has been constructed. The information included in the annual reports will be used by the Service to evaluate the Applicant's compliance with the terms and conditions of this HCP and the Section 10(a)(1)(B) permit.

The annual HCP Compliance Report will include a monitoring report of any construction activities on site, the occurrence, if any, of changed or unforeseen circumstances, and the methods used to address such circumstances. The annual reports will be submitted to the Carlsbad Fish and Wildlife Office (CFWO) by December 1 (or the first business day after if that date falls on a weekend or holiday). Following submittal of the HCP Compliance Report once grading of the proposed Project is complete, no additional HCP Compliance Reports shall be required; however, the RGCB will provide annual reports on the status of long-term management of vernal pools/basins and San Diego fairy shrimp in accordance with the CBEI.

6.2 CHANGED AND UNFORESEEN CIRCUMSTANCES

6.2.1 Changed Circumstances

"Changed circumstances" are defined as changes in circumstances affecting a species or geographic area covered by a conservation plan that can reasonably be anticipated by plan developers and the Service and that can be planned for (e.g., the listing of a new species, or a fire or other natural catastrophic event in areas prone to such events).

In the event of a new listing of one or more species not covered by this HCP during the life of the Section 10(a)(1)(B) permit or the designation of critical habitat for a listed species, the Service and the Applicant will identify actions that might cause jeopardy to, take of, or adverse modification of the designated critical habitat of such listed species, and the Applicant will avoid such actions in the implementation of Covered Activities until approval of an amendment to this HCP to address the newly listed species, or until such measures are no longer required.

6.2.2 Unforeseen Circumstances

"Unforeseen circumstances" are defined in the Department of the Interior's "Habitat Conservation Plan Assurances ("No Surprises") Final Rule, issued February 23, 1998 (63 FR 8869) as changes in circumstances affecting a species or geographic area covered by a conservation plan that could not reasonably have been anticipated by the plan developer or the Service at that time of the plan's negotiation and development and that result in a substantial and adverse change in the status of a covered species. Pursuant to the provisions of the "No Surprises" Rule, the Service may impose additional mitigation or other measures on the

Applicant without consent only to the extent allowed by and in conformance with the “No Surprises” Rule currently codified at 50 C.F.R. 17.22(b)(5).

Pursuant to the “No Surprises” rule at 50 C.F.R. §17.22(b)(5)(iii)(C), the Service has the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. The findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the San Diego fairy shrimp. The Service will consider, but not be limited to, the following factors:

- The size of the current range of the San Diego fairy shrimp;
- The percentage of San Diego fairy shrimp range adversely affected by this HCP;
- The percentage of San Diego fairy shrimp range that has been conserved by this HCP;
- The ecological significance of that portion of the San Diego fairy shrimp range affected by this HCP;
- The level of knowledge about the San Diego fairy shrimp and the degree of specificity of the San Diego fairy shrimp’s conservation program under this HCP; and,
- Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the San Diego fairy shrimp in the wild.

If the Service or the Applicant becomes aware of the existence of a potential unforeseen circumstance, each shall immediately notify the other of the existence of a potential unforeseen circumstance. Except where there is a substantial threat of imminent, significant adverse impacts to San Diego fairy shrimp, the Service will provide the Applicant a 30-calendar day notice of a proposed written finding of unforeseen circumstances prior to adopting the finding, during which time the Service will meet with the Applicant to discuss the proposed finding, to provide the Applicant with an opportunity to submit information to rebut or propose amendments to the proposed finding, and to consider any proposed changes to the conservation strategies for the RGCB and this HCP’s operating conservation program.

Notwithstanding the limits on conservation and mitigation measures identified above, the permit for this HCP may be revoked if the Service determines that continuation of the Covered Activities would be inconsistent with the criterion set forth in 16 U.S.C. 1539(a)(2)(B)(iv). See also 50 C.F.R. 17.22(b)(8). Nothing in this HCP shall preclude the Service and any federal, state, local, or tribal government agency, or a private entity, from taking additional actions at their own expense to protect or conserve the San Diego fairy shrimp. The existence of unforeseen circumstances does not authorize the Service to violate any federal, state, or local laws, ordinances, regulations, or policies.

6.3 AMENDMENTS

6.3.1 Minor Amendments

Any party may propose minor modifications to this HCP by providing notice to the other party. Such notice shall include a statement of the reason for the proposed modification and an analysis of its environmental effects, including its effects on operations under the HCP and on covered species. Minor amendments are permissible without amending the underlying Section 10(a)(1)(B) permit provided that the Service determines that the changes do not (1) cause additional take of San Diego fairy shrimp that was not analyzed in connection with the original HCP; (2) result in operations under the HCP that are significantly different from those analyzed in connection with the original HCP; or (3) have adverse effects on the environment that are new or significantly different from those analyzed in connection with the original HCP.

Minor amendments to this HCP may include corrections of typographic, grammatical, and similar editing errors that do not change the intended meaning or corrections to any maps or exhibits to correct errors in mapping or to reflect previously approved changes in the permit or HCP. All minor amendments proposed by the permit holder to this HCP will be submitted to the Service in writing.

6.3.2 Major Amendments

Amendments to the HCP that do not fit the definition of a minor amendment will be processed as formal amendments to the permit in accordance with all applicable legal requirements, including but not limited to the Act, NEPA, and the Service's permit regulations, including provision for public review and comment.

6.4 PERMIT RENEWAL OR EXTENSION

The permit may be renewed or extended with the approval of the Service. The request to renew or extend the permit must be submitted in writing by the permit holder and reference the permit number; certify that all statements and information in the original application are still correct or include a list of changes, and provide specific information concerning what take has occurred under the existing permit and what portions of the project are still to be completed. The request must be made to the Service's Carlsbad Fish and Wildlife Office (CFWO) at least 30 days prior to the permit's expiration date. As long as the request is received within 30 days prior to the permit expiration date, the permit shall remain valid while the renewal or extension is being processed. The renewal or extension may be approved in writing by the CFWO Field Supervisor. Changes to the HCP that would qualify as a formal amendment will be handled in accordance with Section 6.3 of this HCP.

6.5 PERMIT TRANSFER

The permit may only be transferred consistent with 50 CFR Part 13 Section 13.25, which requires that: (1) the permit holder and proposed transferee apply for a permit transfer (through the submission of an assumption agreement between the two parties); (2) the proposed transferee

meets all the qualifications for holding a permit; (3) the transferee provides written assurances that it can meet the financial obligations and will implement the terms and conditions of the permit, including any outstanding mitigation requirements; and (4) the transferee provides any additional information the Service deems necessary. After expiration of the permit, any “take” within the permitted geographical boundaries, would require re-authorization.

6.6 PERMIT SUSPENSION

The Service may suspend or revoke their permit if Main 16, LP fails to implement the HCP in accordance with the terms and conditions of the permits or if suspension or revocation is otherwise required by law. Suspension or revocation of the Section 10(a)(1)(B) permit, in whole or in part, by the Service shall be in accordance with 50 CFR 13.27-29, 17.32(b)(8).

6.7 OTHER MEASURES

Section 10(a)(2)(A)(iv) of the Act states that an HCP must specify other measures that the Service may require as being necessary or appropriate for purposes of the plan. The Applicant has discussed the proposed elements of this conservation plan with the Service, and no such additional elements have been identified. Therefore, no additional required measures have been identified for the Project by the Service.

7.0 FUNDING

The Applicant, Main 16, LP, will pay for all costs associated with implementing this HCP. A receipt for the purchase of the 2 vernal pool/basin with fairy shrimp conservation credits from RGBC has been provided to the CFWO, which demonstrates that the habitat compensation has been funded (Appendix A).

The Applicant commits to fully fund implementation of this HCP. In the event of material change in the financial position of the Applicant that is likely to impair its ability to fund this HCP, the Applicant will promptly notify the Service and meet with the Service to identify alternative means to carry out its obligations under this HCP. The Applicant acknowledges that failure to provide adequate funding and a consequent failure to implement the terms of this HCP in full could result in temporary permit suspension or permit revocation.

8.0 ALTERNATIVES TO THE PROPOSED ACTION CONSIDERED

The site plan for the Project, as described in Section 2.0, is the only site plan that is considered feasible to the Applicant (Figure 7). The feasibility is based on 2 primary factors: (1) small size of the site; and (2) the ability to mitigate for potential impacts to the San Diego fairy shrimp and its ponded basins. In accordance with the requirements of the Act, the Applicant investigated alternatives that would avoid impacts to the San Diego fairy shrimp habitat on site. Because of the small size of the site and the need to avoid both the basins and watershed of the basins, an alternative site plan that would have maintained some of the ponded basins on site (i.e., a reduced footprint alternative) was not feasible. Additionally, any on-site conservation would have resulted in an isolated patch of open space surrounded by urban development.

The Applicant also considered the No Action Alternative. Under the No Action Alternative, no development would occur and no application for incidental take would be processed. As this alternative would result in no development of the Project site, San Diego fairy shrimp habitat would continue to exist on the site; however, no San Diego fairy shrimp conservation would be provided under this alternative. The Project site would continue to be subject to impacts from pedestrian, pet, and bicycle traffic under this alternative.

9.0 REFERENCES CITED

- Black, Chuck. 2011. Wet Sampling for the Presence of Hatched Fairy Shrimp at a Ramona, California Property. April.
2006. Wet Sampling for the Presence of Hatched Fairy Shrimp at a Ramona, California Property. May.
2004. Examination of Basins for Fairy Shrimp Cyst Presence at a Ramona, California Property. September.
- Hathaway, S.A. and M.A. Simovich. 1996. Factors affecting the distribution and co-occurrence of two southern Californian anostracans (Branchiopoda), *Branchinecta sandiegonensis* and *Streptocephalus woottoni*. Journal of Crustacean Biology 16: 669-677.
- HELIX Environmental Planning, Inc. 2013. Biological Technical Report for the Main 16, LP. Ramona Project.
- Ripley, B.J., J. Holtz, and M.A. Simovich. 2004. Cyst bank life-history model for a fairy shrimp from ephemeral ponds. Freshwater Biology 49:221-231.
- U.S. Fish and Wildlife Service (Service). 2008. San Diego Fairy Shrimp (*Branchinecta sandiegonensis*) 5-Year Review: Summary and Evaluation. 56 pp. + appendices.
1998. Recovery plan for Vernal Pools of Southern California Recovery Plan. September. 113+ pp.
- U.S. Fish and Wildlife Service (Service) and National Oceanic and Atmospheric Administration (NOAA). 1996. Habitat Conservation Planning and Incidental Take Permit Processing Handbook. Washington, DC. November 4. Available at: http://www.nmfs.noaa.gov/pr/pdfs/laws/hcp_handbook.pdf.

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APPENDIX A
PURCHASE RECEIPT

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**RAMONA GRASSLANDS CONSERVATION BANK CREDIT
PURCHASE AGREEMENT AND ACKNOWLEDGMENT**

This Conservation CREDIT PURCHASE AGREEMENT AND ACKNOWLEDGMENT ("Agreement") is entered into this 27th day of August, 2014 by and among Judd RR Investments, LLC, a California limited liability company, and/or Kearny PCCP Otay 311, LLC, a Delaware limited liability company ("Seller"), and MAIN16 L.P., a California limited partnership ("Buyer").

RECITALS

A. Pursuant to that certain Conservation Bank Enabling Instrument regarding the Establishment, Operation and Use of the **Ramona Grasslands Conservation Bank** dated August 4, 2014 (the "CBEI"), by and among Judd RR Investments, and/or LLC and Kearny PCCP Otay 311, LLC; the California Department of Fish and Wildlife ("CDFW"); the United States Fish and Wildlife Service ("USFWS") (CDFW and USFWS are referred to collectively hereinafter as the "Agencies"). The Agencies have acknowledged the creation of the Ramona Grasslands Conservation Bank (the "Conservation Bank") and the right of Seller to sell "Conservation Credits" as provided therein. Each Conservation Credit is equivalent to 1 acre of mitigation.

B. Buyer desires to mitigate the loss of certain upland and wetland habitat values on real property located in San Diego County California commonly known as **Main 16** (the "Buyer's Property").

C. Buyer has agreed to purchase from Seller, and Seller has agreed to sell to Buyer **2.0** Vernal Pool/Basin with Fairy Shrimp Conservation Credits (the "Conveyed Credits") from the Conservation Bank on the terms and conditions set forth herein. The 2.0 credits represents 2.0 acres of valid U.S. Fish and Wildlife and California Department of Fish and Wildlife mitigation for upland and wetland resources, all credits being fully consistent with the CBEI.

NOW, THEREFORE, in consideration of the agreements and acknowledgments set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree and acknowledge as follows:

1. **Purchase Price.** The purchase price for the 2.0 Conservation Credits shall be One-Hundred-Sixty thousand dollars (\$160,000.00). Buyer shall deposit the entire \$160,000.00 ("Buyer's Deposit") at First American Title Company ("Escrow"), c/o Ms Karen Hagen, at 7979 Ivanhoe Avenue, Suite 200B, La Jolla, CA 92037, Tel (858)-202-5675; (Email KHagen@firstam.com) within three (3) business days of the Effective Date of this Agreement. The Effective Date is defined as the date by which Buyer and Seller have fully executed this Agreement.

2. **Acknowledgment of Sale.** On the Closing Date, Seller shall deliver a fully executed original of the Acknowledgment of Sale of Conservation Credits ("Acknowledgment"), a form of which is attached hereto as Exhibit A and such other documents and instruments as may be required by any of the Agencies to evidence and recognize the transfer of the Conveyed Credits to Buyer. Moreover, Seller agrees that to the extent such have not been provided to Buyer at the closing, then if requested by Buyer subsequent to the closing, Seller will provide Exhibit A as may be required by any of the Agencies to evidence and recognize the transfer of the Conveyed Credits within ten (10) days following Buyer's request. The provisions of this Paragraph 2 shall survive the closing and termination of this Agreement.

3. **Closing.** The closing will occur on or before **September 15, 2014**, or such other date to which the Buyer and Seller may mutually agree in writing (the "Closing Date"). The closing shall mean the date that the Purchase Price is delivered to Seller and the fully executed Acknowledgment of Sale of Conservation Credits is delivered to Buyer. Notwithstanding the foregoing, Buyer may accelerate the Closing Date, subject to release of credits by the Conservation Bank Review Team (CBRT).

4. **AS-IS Sale.** Buyer acknowledges and agrees that: (a) it is the Buyer's sole responsibility to determine the acceptance of the Conveyed Credits by the Agencies as mitigation for impacts to upland values, and any completed sale of any Conveyed Credits shall be final; (b) the purchase and sale of the Conveyed Credits shall be made on an "AS IS, WHERE IS, WITH ALL FAULTS" basis; and c) no representations or warranties have been made or are made and no responsibility has been or is assumed by Seller or by any officer, agent, affiliate, attorney, or representative acting or purporting to act on behalf of Seller as to (i) the mitigation value of the property conveyed to the Agencies in establishing the Conservation Bank; (ii) the mitigation value or mitigation requirements of Buyer's Property, (iii) the acceptance of the Conveyed Credits by the Agencies or any other governmental agency as mitigation for the loss of habitat values associated with Buyer's Property, or (iv) any other fact or circumstances which might affect the Conservation Bank, the Buyer's Property, or the Conveyed Credits.

5. **Termination.** Time is of the essence in this Agreement. In the event that the CBRT fails to release the requisite credits by the Closing date, then Seller shall so inform Buyer, and extend the closing to a later date ("Extended Closing Date") as appropriate. Three business days prior to the Closing Date (or the "Extended Closing Date"), Seller shall notify Buyer, via overnight mail, of Seller's readiness to close on this Agreement ("Closing Notice"). Should Buyer fail to close within three (3) business days from receiving the Closing Notice, Seller, at its election, and in its sole and



absolute discretion, by written notice to Buyer ("Termination Notice"), may terminate this Agreement. Should Seller elect to terminate this Agreement pursuant to Seller's Termination Notice, Seller shall instruct Escrow to refund Buyer's Deposit in full. Thereafter, neither party shall have any further obligations under this Agreement, except as provided in Paragraph 6 below. Regardless of the above, if escrow fails to close within 90 days of opening, the escrow shall be canceled and Buyers deposit returned and the parties shall have no further liability to each other.

6. Brokers. Seller shall pay a commission to Rancho Buho, LLC pursuant to the terms of a separate written agreement if and only if the sale closes. Seller and Buyer each represent to the other that it has not had any other contract, agreement or dealings regarding the Conveyed Credits with, nor any communication in connection with the subject matter of this transaction through, any consultant, broker, agent, finder or other person who can claim a right to a consultant fee, commission or finder's fee in connection with the sale contemplated herein. In the event that other consultant, broker or finder makes a claim for a consultant fee or commission or finder's fee based upon any such contract, agreement, dealings or communication, the party through whom such claim is made shall be solely responsible for and shall indemnify, defend, and hold harmless the other party from and against said commission or fee and all costs and expenses (including without limitation reasonable attorneys' fees) incurred by the other party in defending against such claim. The provisions of this Paragraph 6 shall survive the termination of this Agreement.

7. Integration. Buyer and Seller agree that all negotiations, discussions, understandings and agreements heretofore made between them or their respective agents or representatives are merged in this Agreement and the Exhibits attached hereto, and this written Agreement alone fully and completely expresses their agreement with respect to the subject matter hereof and supersedes all prior agreements and understandings between the parties relating to the subject matter of this Agreement. Buyer and Seller further agree that Buyer has no responsibilities or obligations whatsoever regarding the Conveyed Credits or the CBEI except as are expressly stated in this Agreement.

8. Notices. All deposits and any notice required or permitted to be made or given under this Agreement shall be made and delivered to the parties at the addresses set forth below each party's respective signature. All notices shall be in writing and shall be deemed to have been given when delivered by courier, when transmitted by facsimile (upon confirmation of successfully completed transmission), or delivered by email message, or upon the expiration of two (2) business days after the date of deposit of such notice in the United States mail, registered or certified mail, postage prepaid.

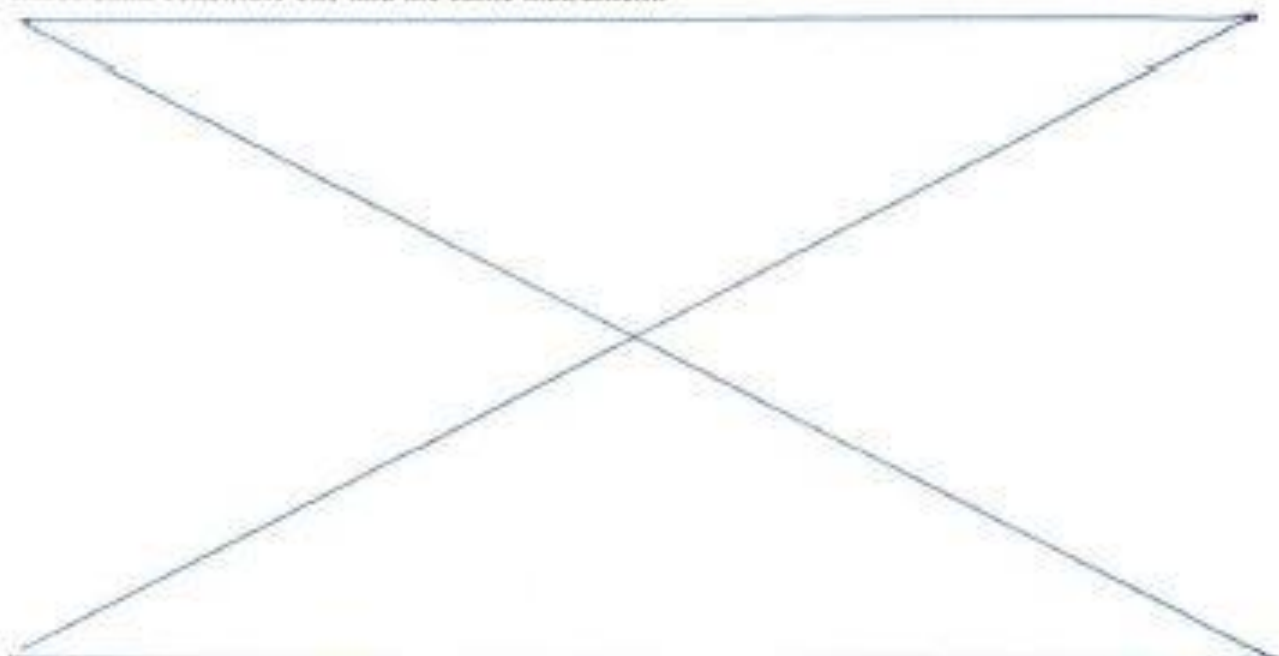
9. Attorneys' Fees. This Agreement shall be governed and construed in accordance with the laws of the State of California and interpreted as if prepared by both parties hereto. In the event a dispute arises concerning the meaning or interpretation of any provision of this Agreement, or in the event of any litigation arising out of or related to this Agreement, the party not prevailing in such dispute or litigation shall pay any and all costs and expenses incurred by the other party in establishing or defending its rights hereunder, including, without limitation, court costs, expert



witness fees, and reasonable attorneys' fees.

10. **Limited Representations and Warranties.** Seller is two limited liability companies duly formed, presently existing and in good standing under the laws of the States of California and Delaware, are qualified to transact business in the State of California, and has the power and authority to own, and does own, the Conservation Credits, and the power and authority to consummate the sale of Conveyed Credits as contemplated by this Agreement, and the persons executing this Agreement has the full authority to bind Seller. This Agreement and all instruments, including assignment and/or conveyance documents to be executed by Seller in connection herewith are or when delivered to Buyer will be duly authorized, executed and delivered by Seller and will be valid, binding and enforceable obligations of Seller. Neither this Agreement nor any instrument, including assignment and/or conveyance documents to be executed by Seller in connection herewith does now or will hereafter constitute a breach or default or invalidate, make inoperative or interfere with any contract, agreement, right or interest affecting or relating in any manner to the Conveyed Credits. The Conveyed Credits shall be assigned/conveyed to Buyer at the closing free and clear of all liens or other encumbrances of any type, monetary or non-monetary.

11. **Counterparts.** This Agreement may be executed and delivered in any number of identical counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument.



WHEREUPON, this Agreement has been executed as of the date first-above written.

SELLER:

JUDD RR INVESTMENTS, LLC, a California limited liability company;

By: _____
Name: Mr. Judd Halenza
Its: Manager, Judd RR Investments, LLC


KEARNY PCCP OTAY 311, LLC, a Delaware limited liability company

By: _____
Name: Mr. John Bragg
Its: Member, Kearny PCCP Otay 311, LLC

400 South Sierra Avenue, Suite 100
Solana Beach, CA 92075
Attention: Tatiana Southard
Telephone: (858) 847-9322 Fax: (858) 847-9324
Email: tatiana@thejuddco.com

BUYER:

MAIN16 L.P., a California limited partnership
By: IPMG Inc, Its General Partner

By:  _____
Name: Danny Dabby
Its: President

12526 High Bluff Drive, Suite 355
San Diego, CA 92130
Attention: Danny Dabby
Telephone: (858) 755-0900 Fax: (858) 755-0411
Email: ipmginc@sbcglobal.net

WHEREUPON, this Agreement has been executed as of the date first-above written.

SELLER:

JUDD RR INVESTMENTS, LLC, a California limited liability company:

By: 
Name: Mr. Judd Halenza
Its: Manager, Judd RR Investments, LLC

KEARNY PCCP OTAY 311, LLC, a Delaware limited liability company:

By: _____
Name: Mr. John Bragg
Its: Member, Kearny PCCP Otay 311, LLC

400 South Sierra Avenue, Suite 100
Solana Beach, CA 92075
Attention: Tatiana Southard
Telephone: (858) 847-9322 Fax: (858) 847-9324
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Its: Manager, Judd RR Investments, LLC

KEARNY PCCP OTAY 311, LLC, a Delaware limited liability company

By:  _____

Name: Mr. John Bragg

Its: ~~Member~~, Kearny PCCP Otay 311, LLC

Vice President

400 South Sierra Avenue, Suite 100

Solana Beach, CA 92075

Attention: Tatiana Southard

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San Diego, CA 92130

Attention: Danny Dabby

Telephone: (858) 755-0900 Fax: (858) 755-0411

Email: ipmginc@shcglobel.net



EXHIBIT A

ACKNOWLEDGMENT OF SALE OF CONSERVATION CREDITS

The undersigned seller hereby acknowledges that it has sold and conveyed to MAIN16 L.P., a California limited partnership ("Buyer"), **2 credits** of Vernal Pool/Basin with Fairy Shrimp mitigation from the Ramona Grasslands Conservation Bank for the **Main 16 project**. All terms of this conveyance shall be governed by the provisions of the Conservation Credit Purchase Agreement and Acknowledgment between Buyer and the undersigned dated **August 27, 2014**.

Seller:

Judd RR Investments, LLC and/or
Kearny PCCP Otay 311, LLC
400 South Sierra Avenue, Suite 100
Solana Beach, CA 92075
Attention: Tatiana Southard
Telephone: (858) 847-9322
Fax: (858) 847-9324

By:

Name:

Its:

Date:

[Signature]
John V. Bragg Jr.
Vice President, Kearny PCCP Otay 311, LLC
8/28/14

JOSEPH O'KEEFE
12526 High Bluff Dr., Suite 355
San Diego, Ca. 92130
(619-220-6019)

August 27, 2014

Doreen Stadtlander
U.S. Fish and Wildlife Service
Carlsbad Field Office
2177 Salk Avenue, Suite 250
Carlsbad, CA 92008

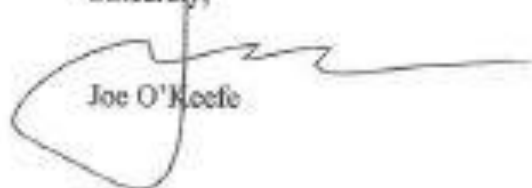
Re: Ramona Grasslands Conservation Bank Vernal Pool Credit Purchase

Dear Ms. Stadtlander,

Main 16 LP, A California Limited Partnership has entered into an agreement with the Ramona Grasslands Conservation Bank to purchase two vernal pool/grassland credits to meet mitigation obligations for the Main 16 LP Project. These credits are being purchased in anticipation of meeting obligations resulting from the Project's impacts to occupied San Diego fairy shrimp habitat and grassland habitat on the property. Credits will be purchased upon release for sale of the vernal pool/grassland credits by the U.S. Fish and Wildlife Service and California Department of Fish and Wildlife.

Please contact Barry Jones, our project biologist, or me if you have any questions.

Sincerely,

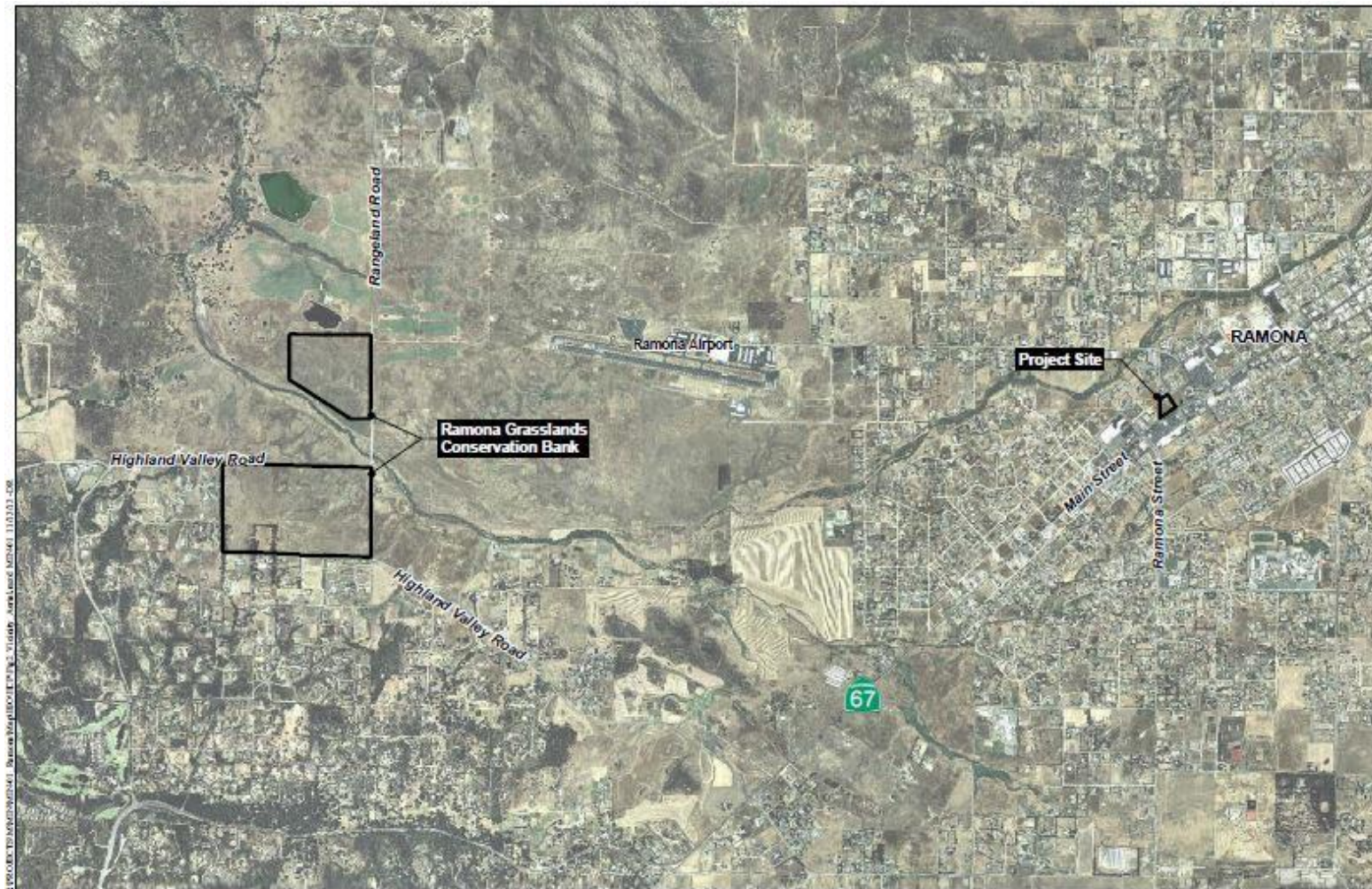


Joe O'Keefe

APPENDIX B FIGURES

- 1 Regional Location Map
- 2 Project Vicinity Map (Aerial Photograph)
- 3 Project Vicinity Map (USGS Topography)
- 4 Aerial Photograph – Project Site
- 5 Vegetation Communities and Sensitive Species – Project Site
- 6 San Diego Fairy Shrimp Critical Habitat
- 7 Site Plan

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Project Vicinity Map (Aerial Photograph)

MAIN 16, LP. RAMONA PROJECT

HELIX
Environmental Planning

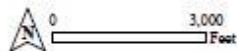
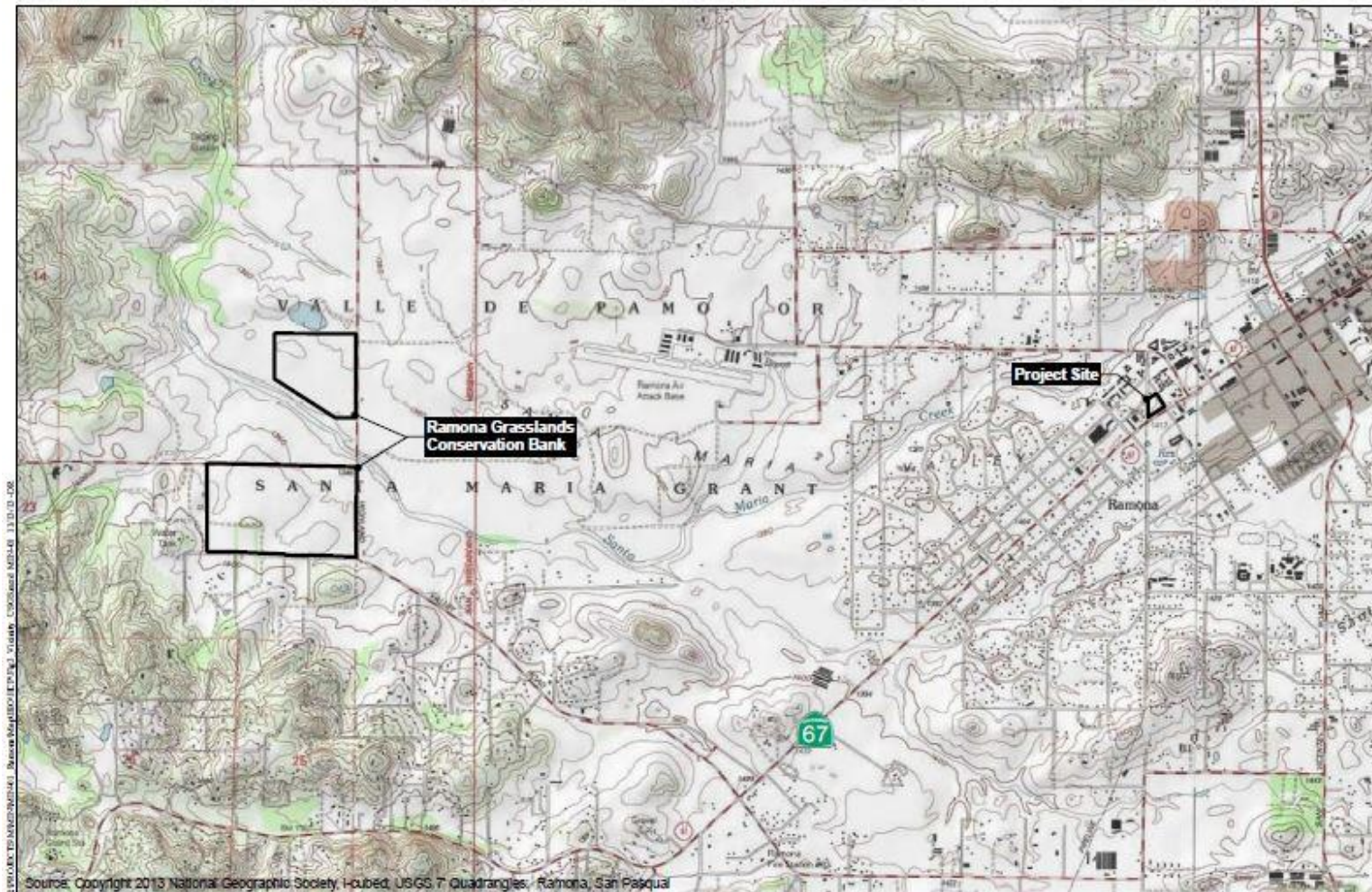


Figure 2

Figure 2. Project Vicinity Map (Aerial Photograph)



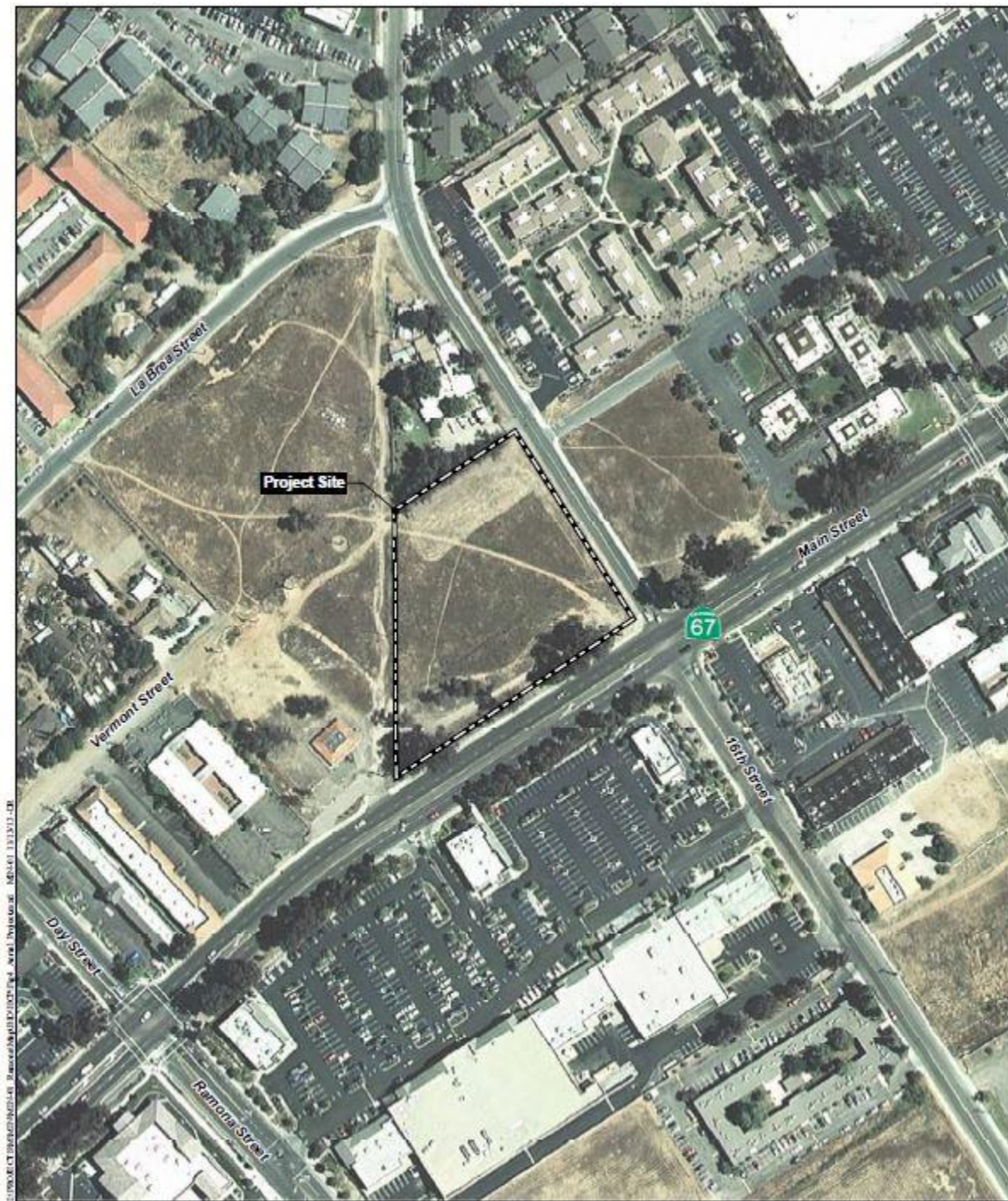
Project Vicinity Map (USGS Topography)

MAIN 16, LP. RAMONA PROJECT



Figure 3

Figure 3. Project Vicinity Map (USGS Topography)



Aerial Photograph - Project Site

MAIN 16, LP, RAMONA PROJECT



Figure 4

Figure 4. Aerial Photograph – Project Site



Vegetation Communities and Sensitive Species - Project Site

MAIN 16, LP. RAMONA PROJECT



Figure 5

Figure 5. Vegetation Communities and Sensitive Species – Project Site

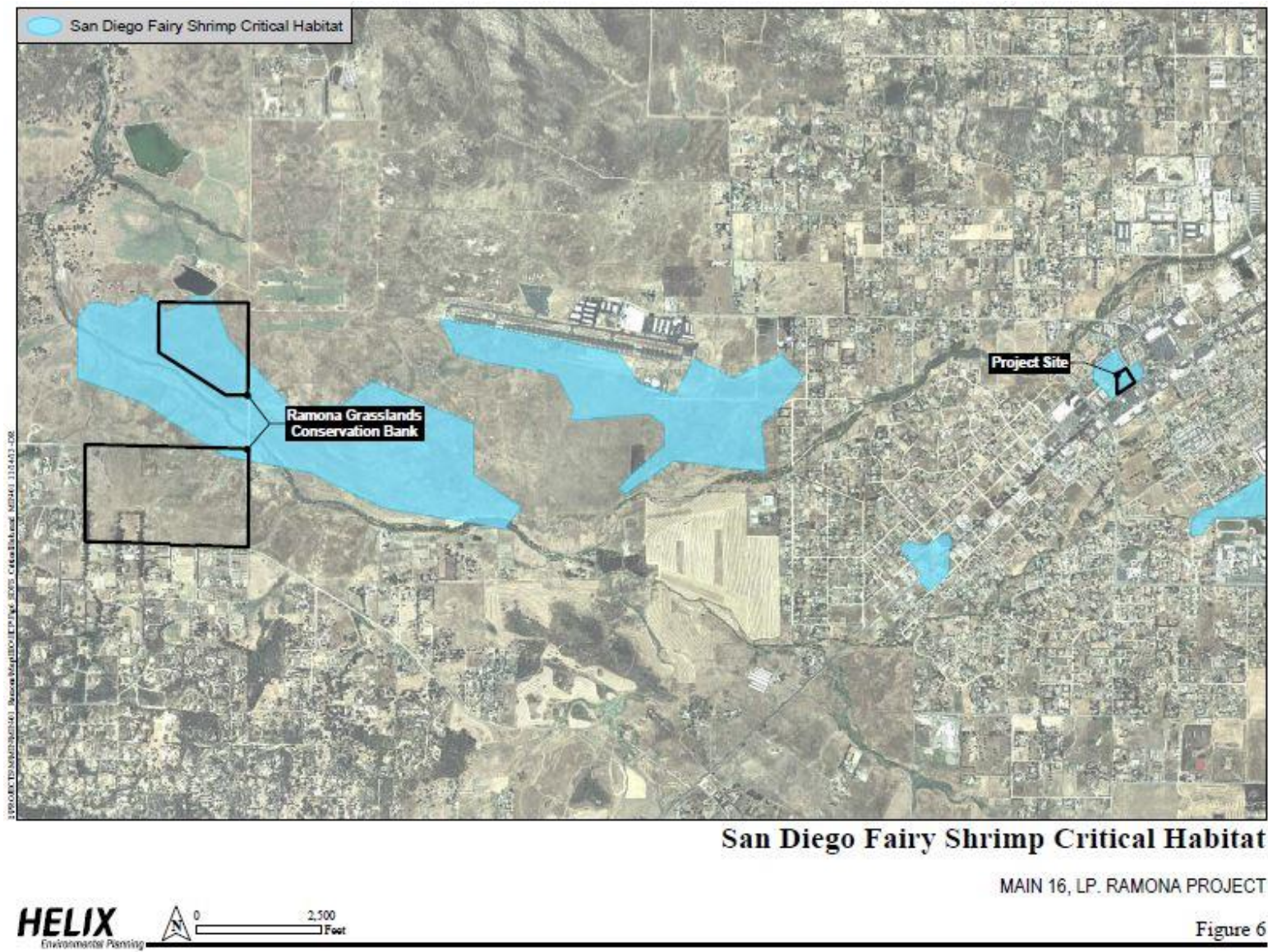


Figure 6. San Diego Fairy Shrimp Critical Habitat



Aerial Photograph - Ramona Grasslands Conservation Bank

MAIN 16, LP. RAMONA PROJECT



Figure 7

Figure 7. Site Plan